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STATE CAPITOL  
PHOENIX, ARIZONA

June 27, 1975

DEPARTMENT OF LAW OPINION NO. 75-5 (R-7) (R75-203)

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REQUESTED BY: ALLAN BEIGEL, M. D., Director  
Southern Arizona Mental Health Center

QUESTIONS: What is the status of privilege and  
confidentiality in each of the following  
situations?

1. A detective from the Tucson Police Department appears at the Southern Arizona Mental Health Center and asks a staff member for information regarding the address of a person whom the officer has been told is a patient. The information has been furnished by the patient's mother and the officer is in pursuit of the patient on a felony warrant.
2. The officer appears at the Southern Arizona Mental Health Center and states that he is conducting a duly constituted criminal investigation and wishes to know whether John Doe is a patient at the Southern Arizona Mental Health Center and, if so, what his current address is.
3. An officer of the Tucson Police Department contacts the Southern Arizona Mental Health Center and indicates that he is conducting a duly constituted criminal investigation. He states that he has learned from a reliable source that John Doe is a patient at the Southern Arizona Mental Health Center and that he wishes to know what his diagnosis is, when he was last seen and what his mental condition was at the time of that visit.
4. A physician calls the Southern Arizona Mental Health Center and indicates that he has referred a patient of his for care. He wishes to know whether this person has

appeared at the Southern Arizona Mental Health Center, and what his mental condition was at the time of the visit.

5. A member of the Southern Arizona Mental Health Center staff is at the jail talking to a prisoner. The prisoner states that his wife has promised that she will come to the Southern Arizona Mental Health Center for treatment. He knows she had an appointment for 9:00 a.m. that morning. He asks the staff member to find out if she has kept the appointment because he is concerned about her welfare. The staff member calls the Walk-In Clinic. What is the Walk-In Clinic's responsibility to divulge this information?

ANSWERS: See body of opinion.

The Second Regular Session of the Thirty-first Legislature enacted new laws regarding Mental Health Services, which have become effective as of October 15, 1974. The new legislation necessitates this opinion to be drafted in two parts--the first part applicable to all divisions of the Department of Health Services until October 15, 1974, and to all divisions thereof except Mental Health Services after that date, and the second part applicable to only the new legislation regarding mental health facilities specifically, which did not become effective until October 15, 1974.

Confidentiality of state hospital records may involve three separate considerations: (1) the physician's ethical duty to maintain the confidences of his patient;<sup>1</sup> (2) the

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1. Ethical duties are specifically imposed upon medical doctors by § 9.1, Principles of Medical Ethics, which provides: "Patience and delicacy should characterize the physician. Confidences concerning individual or domestic life entrusted by patients to a physician and defects in

evidentiary rules concerning the physician-patient privilege;<sup>2</sup> and (3) the statutes and regulations of the Department of Health Services (hereinafter referred to as the "Department") regarding disclosure of information contained in state hospital files. This opinion is specifically directed to the third of the above-listed considerations.

PART I

The Arizona Revised Statutes impose duties upon the Director of the Department regarding disclosure regulations as follows:

The director shall, by regulation:

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18. Establish such reasonable regulations as it deems necessary to keep confidential information relating to diagnostic findings and treatment of patients. . . . In no event shall such confidential information be made available for political or commercial purposes. A.R.S. § 36-136.G.18, as amended, Laws 1973, Ch. 158, § 17.

Additional authority to protect information in the Department of Health Services was adopted by the Legislature and became effective in 1974:

§ 36-107. Power to promulgate rules concerning confidential nature of records

The director shall promulgate such rules and regulations as are required by state law

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Fn. 1 continued: the disposition or character of patients observed during medical attendance should never be revealed unless their revelation is required by the laws of the state."

2. Arizona statutes grant a physician-patient privilege for both criminal proceedings, A.R.S. § 13-1802, as amended, and civil proceedings, A.R.S. § 12-2235, as amended.

or federal law or regulation to protect confidential information. No names or other information of any applicant, claimant, recipient or employer shall be made available for any political, commercial or other unofficial purpose. A.R.S. § 36-107, as amended, Laws 1973, Ch. 158, § 3.

Pursuant to legislative authority, the Director has promulgated regulations regarding confidentiality of records and disclosure thereof. These regulations were initially applicable to the State Department of Health but are now equally applicable to the Department of Health Services.<sup>3</sup> Regulations of this nature are considered valid so long as the Legislature has made a statutory declaration of policies and primary standards, and so long as the regulations promote the spirit and purpose of the legislation and its complete operation and are in keeping with the clear intent of the enactment. Employment Security Commission of Arizona v. Arizona Citrus Growers, 61 Ariz. 96, 103-104, 144 P.2d 682 (1944); DeHart v. Cotts, 99 Ariz. 350, 351, 409 P.2d 50 (1965). The applicable regulations appear to be in keeping with the general legislative spirit concerning confidentiality of files and the relevant portions read as follows:

Reg. 1-3-1.2 Prohibition Against Disclosure

No disclosure by any employee of any medical information in his possession or in the possession of the Department or of any local health department which relates to any identifiable individual or his family shall be made, directly or indirectly, except as authorized in this part.

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3. Although the regulations were initially applicable only to the Department of Health, a savings clause was enacted upon creation of the Department of Health Services, which stated that nothing in the new act shall be construed to require the readoption of any regulation initially adopted by the Department of Health, provided such regulations are in conformity with the new act creating the Department of Health Services. Laws 1973, Ch. 158, § 319.

Reg. 1-3-1.3 Authority for Refusal to  
Disclose

Any request or demand for medical information disclosure of which is forbidden by this part, shall be declined upon the authority of this part and the statute under which it is promulgated. If any employee is sought to be required, by subpoena or otherwise, to produce such medical information, he shall respectfully decline to present or divulge the same, basing his refusal upon the provisions of law and this part prescribed thereunder and shall through established administrative channels seek the advice of the appropriate county attorney or the Attorney General.

Reg. 1-3-1.4 Information Which may be  
Disclosed

Medical information required by Reg. 1-3-1.2, to be kept confidential, is hereby authorized to be disclosed in the following cases and for the following purposes:

1. At the request or with the permission of the person or persons concerning whom the medical information directly relates. If such a person is a minor or an incompetent, such request or permission shall be obtained from his parent or guardian.

2. Any medical information relating to the death of a person may be furnished to his surviving spouse or relative or the legal representative of his estate upon the written request of such qualified person.

3. With proper administrative approval, to any physician, nurse or other paramedical personnel or to any officer or employee of any federal, state or local government or non-profit institution or foundation who, acting in his official capacity and within the scope of his employment, has, within the reasonable discretion of a properly authorized employee,

who is disclosing or has been requested to disclose such information, a valid purpose for acquiring the same, which purpose is consistent with the administration of a project or program under or with the assistance of the Department, or a local health department or which purpose is to provide medical care to the individual concerned or suspected contact of such individuals.

4. Where the purpose for which the medical information is sought is not inconsistent with the objectives and purposes of the Department or a local health department and if departmental administration permits, the Commissioner or in the case of a local health department, the director thereof, may authorize the disclosure of any such information.

5. Authorization for disclosure of information pursuant to this regulation shall not be relied upon to contravene the intent of any statute which specifically prohibits the disclosure of certain information.

All of the above regulations refer to disclosure of "medical information", and the scope of the Department responsibility is necessarily limited by the meaning of that phrase, which is specifically defined as:

All clinical records, medical reports, laboratory statements or reports, any file, film, record or report or oral statement relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. Reg. 1-3.1.1A.

Regarding the particular questions submitted to this office, the discussion following in Part I of this opinion applied to all divisions of the Department until October 15, 1974. After that date, the answers will not apply to the state mental health service facilities, but will still apply to all other branches of the Department.

1. When a detective from the Police Department asks for the street address of a patient, the address should be disclosed, assuming that the request is made by the detective in his official capacity. Since the request is made for an official purpose, the principal issue is whether the request is for "medical information" within the definition set forth in the regulations. A street address does not fall within that definition and would therefore not be subject to the Department's confidentiality requirements.

2. When a detective from the Police Department asks whether a certain individual is a patient and, if so, what his current address is, the information should be disclosed for the same reasons discussed above, assuming that the information is requested for an official purpose.

3. When an officer from the Police Department contacts the Southern Arizona Mental Health Center and requests information concerning a patient's diagnosis, when he was last seen and what his mental condition was at the time of that visit, only a portion of the requested information should be disclosed. The time of a patient's last visit is not "medical information" and should therefore be disclosed. However, information concerning diagnosis and mental condition may only be authorized if the request is consistent with the administration of a project or program under or with the supervision of the Department, and then only with the approval of the hospital director. See Reg. 1-3-1.4.3.

4. When a physician indicates that he has referred a patient to the Southern Arizona Mental Health Center for care and he wishes to know whether the person has appeared at the Center and what his mental condition was in the event that he appeared at the Center, full disclosure is authorized upon verification of the requesting physician's status.

5. When a spouse questions an employee of the Center regarding whether his wife has appeared for an appointment, the information is confidential and may not be disclosed. This situation is specifically governed by A.R.S. § 36-107, as amended, which directs that no information should be disclosed for any unofficial purpose.

PART II

The Legislature recently enacted a comprehensive statutory scheme concerning mental health care facilities. The act, effective October 15, 1974, specifically deals with confidentiality of records as follows:

§ 36-509. Confidential records

All information and records obtained in the course of evaluation, examination or treatment shall be kept confidential and not as public records, except as the requirements of a hearing pursuant to this chapter may necessitate a different procedure. Information and records may only be disclosed, pursuant to rules established by the department, to:

1. Physicians and providers of health, mental health or social and welfare services involved in caring, treating or rehabilitating the patient.
2. Individuals to whom the patient has given consent to have information disclosed.
3. Persons legally representing the patient, and in such case, the department's rules shall not delay complete disclosure.
4. Persons authorized by a court order.
5. Persons doing research or maintaining health statistics, provided that the department establishes rules for the conduct of such research, as will insure the anonymity of the patient.
6. The department of corrections in cases where prisoners confined to the state prison are patients in the state hospital on authorized transfers either by voluntary admission or by order of the court.



7. Governmental or law enforcement agencies when necessary to secure the return of a patient who is on unauthorized absence from any agency where the patient was undergoing evaluation and treatment. A.R.S. § 36-509, as amended, Laws 1974, Ch. 185, § 2.

With regard to the questions directed to this office:

1. Regarding the address of a patient at the Center, the principal question is whether this information comes within the scope of A.R.S. § 36-509, as amended, Laws 1974, Ch. 185, § 2. Since an address is generally considered a matter of preliminary input and is not information "obtained in the course of evaluation, examination or treatment", the statute is inapplicable and the information should be disclosed, assuming that the detective is acting in his official capacity.

2. Regarding whether a certain individual is a patient and, if so, what his address is, the information should be disclosed for the same reason discussed above.

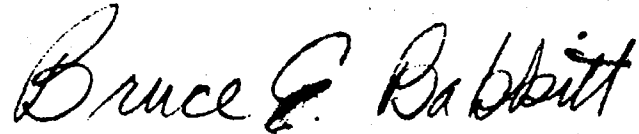
3. Regarding information as to what a patient's diagnosis is, when he was last seen and what his mental condition was, information regarding the time of a patient's last visit should be disclosed for the reasons stated above. However, information regarding diagnosis and mental condition is information "obtained in the course of evaluation, examination or treatment" and should be kept confidential. The only situations in which disclosure is authorized are when the officer is acting pursuant to a court order, A.R.S. § 36-509.4, as amended, Laws 1974, Ch. 185, § 2, or when disclosure is necessary to secure the return of a patient who is on unauthorized absence from the Center. A.R.S. § 36-509.7, as amended, Laws 1974, Ch. 185, § 2.

4. Regarding the request by the referring physician, the center may disclose facts regarding whether the patient has appeared and what his mental condition was at the time of his visit, since the statute authorizes disclosure to a physician "involved in caring, treating or rehabilitating the patient." A.R.S. § 36-509.1, as amended, Laws 1974, Ch. 185, § 2.

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5. Regarding the husband's request concerning his wife's appointment, the general confidentiality statute applicable to the Department prevents disclosure for any unofficial purpose. A.R.S. § 36-107, as amended. Therefore, such information should be kept confidential.

Respectfully submitted,

A handwritten signature in cursive script, reading "Bruce E. Babbitt". The signature is written in dark ink and is positioned above the typed name.

BRUCE E. BABBITT  
Attorney General

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